



Dennis A. Murphy, Esq.  
[dgusmurphy@gmail.com](mailto:dgusmurphy@gmail.com)  
781-588-7881

June 20, 2023

BY EMAIL: [Pdeschenes@walpole-ma.gov](mailto:Pdeschenes@walpole-ma.gov)

Walpole Zoning Board of Appeals  
135 School Street  
Walpole, MA 02081

Re: Safe harbor for Darwin Commons, 32 Darwin Ln, Walpole MA

Dear Members of the Board:

This office represents several abutters (whose names and addresses are copied below) to the project proposed by Wall Street Development Corp. (“Developer”) for the Residence at Darwin Commons (“Project”) located at 32 Darwin Lane in Walpole (“Site”). Given the long history of prior efforts to develop or sell the Site, a quick recap seems in order. Please consider these comments at your public hearing scheduled for Monday June 26, 2023.

#### Prior Permitting of Darwin Lane

Darwin Lane was approved by the Walpole Planning Board under a definitive subdivision plan in 1996, amended in 1997. Mr. Hasenjaeger was the developer. At his request, the Planning Board waived the maximum length for a dead end street to allow Darwin Lane to be longer than 750 feet. (11/6/1997 Ltr. to J. Hasenjaeger from Walpole Planning Bd., waiving § IV-2 of Walpole subdivision rules and regulations, attached as Exhibit A) At the time, those who purchased lots at the end of Darwin Lane paid a premium for being on the cul de sac.

A decade later, Mr. Hasenjaeger applied to extend Darwin Lane and add a five lot subdivision that would have required further waiver from the dead end street that already exceeded the maximum length. The Planning Board unanimously denied it for that reason:

The reason stated for the denial is that the waiver of the 750 foot maximum street length requirement was not granted; therefore, the subdivisions could not go forward as the proposed street is longer than 750’. (11/2/2005 Ltr. from Planning Bd., attached as Exhibit B)

Recognizing that Darwin Lane would never be extended further because the Planning Board had already granted the initial requested waiver, Mr. Hasenjaeger tried to sell his 3.4 acre Site to the Town. Based on its own independent appraisal, the Town offered \$150,000 to acquire

the Site for aquifer protection because it lies adjacent to public water supply well #5, and contains Zone I and Zone II restricted areas due to its proximity to a public water supply well. Mr. Hasenjaeger demanded more than double that amount (\$379,000). The Board of Sewer & Water Commissioners considered “taking it by eminent domain”, but no action was taken at the Fall 2019 Town Meeting on the proposed article. (10/10/2019 Minutes of Bd. of Sewer & Water Commissioners, p. 2, attached as Exhibit C)

Recent efforts to develop the Site have been equally unsuccessful. Two years ago in the summer of 2021, Mr. Petrozzi and Mr. Hasenjaeger submitted a comprehensive permit application for 28 units on the Site. The Board invoked safe harbor, which was upheld by DHCD. (11/24/2021 Ltr. to J. Lee from DHCD, attached as Exhibit D)

Then a couple of months later at a hearing in January 2022, they showed the Board an alternative plan for twelve units that they would substitute if the Board rescinded its safe harbor determination. But by then it was too late since DHCD had already issued its ruling, which was not appealed. The twelve unit plan is notable because the purchase and sale agreement between Mr. Hasenjaeger and Mr. Petrozzi is based on twelve units, which suggests the Buyer and Seller agree the project would be economic at that density.

Last spring, the same developer submitted the same 28 unit application. The Board once again invoked safe harbor. Despite the regulation that automatically stays any hearing on the Project, developer submitted another five lot subdivision plan to the Planning Board while the appeal was pending, in flagrant violation of the rules. As in 2005, that five lot plan would require a further waiver of Section IV-2 to exceed the maximum length of a dead end street. Developer explicitly stated “should the waiver be granted, [it] would be pleased to substitute the conventional subdivision for the 40B development. (8/14/2022 Ltr. from L. Petrozzi to Planning Board, attached as Exhibit E) As it has in the past, the Planning Board once again unanimously denied the five lot subdivision, citing comments from the Fire Department that extending the road further would compromise public safety. (12/1/2022 Minutes of Walpole Planning Board, attached as Exhibit F)

### The Board Should Invoke Safe Harbor Again

Even though you have done so twice before, the Board should vote once again to invoke safe harbor at the hearing next week. Recall that you did so already at the outset of the public hearing process. But at that time, it was based solely on the Housing Production Plan certification. Now, based on the applicant’s own conduct since then, there is another independent basis for safe harbor because Applicant sought and was denied subdivision approval, which is considered a Related Application under the Chapter 40B regulations. 760 CMR 56.03(7)

Related Applications require the Applicant to wait a year between a comprehensive permit and any “subdivision, or other approval related to construction on the same land” that did not include a minimum number of affordable units (10%). Id. It is undisputed that the five lot subdivision applied for by the same developer for the same land did not include any SHI units. As such, it constitutes a “Related Application”, which cannot be considered until “12 months has elapsed.” Id. Since the Planning Board acted on December 1, 2022 on the subdivision plan application, the project is not eligible to be heard by the ZBA until December 1, 2023. The Board

should invoke this new safe harbor to enforce the rule that requires a year long hiatus to prevent precisely this kind of misuse of the Chapter 40B process.

Should Developer wish to proceed despite the Related Application safe harbor, the Board can give them the opportunity to present the Project on its merits. But you should not reward the applicant's gamesmanship and flouting the rules by waiving the safe harbor.

Very truly yours,

/s/ Dennis A. Murphy

Dennis A. Murphy

cc: Jay Talerman, Esq.  
David & Jo-Anne Vlacich - 31 Darwin Lane, Walpole MA 02081  
Joe & Bernadette Moriarty - 28 Darwin Lane, Walpole MA 02081  
Jim & Yasemin Herlihy - 3 Darwin Lane, Walpole MA 02081  
Michael & Laurie Moore - 4 Darwin Lane, Walpole MA 02081  
Michael & Caroline Farley - 15 Darwin Lane, Walpole MA 02081  
Mike & Marianne Stanton - 19 Darwin Lane, Walpole MA 02081  
Mario & Susan Corso - 24 Darwin Lane, Walpole MA 02081  
Corey Greenburg & Kathryn Fisher - 27 Darwin Lane, Walpole MA 02081  
Denna Horne & Jim Howley - 23 Darwin Lane, Walpole MA 02081  
Sean & Amy Radley - 12 Darwin Lane, Walpole MA 02081  
Mark & Jacqueline Mannion - 8 Darwin Lane, Walpole MA 02081  
Paul & Caroline Truland, 15 Queens Court, Walpole MA 02081  
Tom & Peg White, 20 Darwin Lane, Walpole MA 02081

# Exhibit A



Commonwealth of Massachusetts

## Town of Walpole Planning Board

John Conroy, Chairman  
David Lehto, Vice Chairman  
Elizabeth Nashawaty, Clerk  
David Kearney  
Clifton Snuffer

Floyd Forman, Town Planner

COPY

Mr. Ronald Fucile  
Town Clerk  
Town Hall  
Walpole, MA 02081

SUBJECT: Walpole Estates  
Definitive Subdivision Decision

Dear Mr. Fucile:

It is hereby certified by the Planning Board of the Town of Walpole, Massachusetts, that at a duly called and properly posted meeting of said Planning Board, held on December 5, 1996 it was voted to approve a Definitive Plan entitled "WALPOLE ESTATES", dated December 15, 1995, revised on August 13, 1996 drawn by John R. Anderson & Associates, 281 Mylod Street, Owned by Custom Colonial Homes, Corp, 492 Walpole Street (Suite 11), Norwood, MA originally filed with the Planning Board on March 20, 1996 concerning the property located off Common Street.

Said approval is granted in accordance with M.G.L. Chapter 41, Sections 81K-81GG, and the Town of Walpole Planning Board Rules and Regulations Governing the Subdivision of Land and the Issuance of Certain Special Permits (hereinafter referred to as the "Subdivision Rules and Regulations") and is subject to the following conditions:

### Standard Conditions

1. The design of all detention basins shall be subject to the approval of the Conservation Commission and the Town Engineer, and any revisions to the design of any detention basins shall henceforth be subject to the approval of the Planning Board. In accordance with Section III-8-(c) of the Subdivision Rules and Regulations, the construction of the detention basins may be subject to incorporation into any cost estimates for the construction of ways and installation of municipal services upon which a performance guarantee will be based for the entire subdivision.

2. In accordance with Section IV-6-(d) -(7) and Section IV-6-(d)-(9) of the Subdivision Rules and Regulations, an Operation and Maintenance Plan and covenant for the detention basins shall be submitted to the Planning Board for approval prior to the execution of a Form I (Release of Covenant) for any of the lots within the subdivision. The applicant will make best efforts to submit this plan and covenant prior to endorsement of approval of the Definitive Plan.
3. In accordance with Section 9-I of the Zoning By Laws , the applicant has submitted to the Planning Board for approval a development schedule demonstrating to the reasonable satisfaction of the Planning Board the applicability of each design criteria for which the applicant seeks credit. The applicant will record the approved development schedule at the Norfolk County Registry of Deeds and file it with the Town Clerk prior to issuance of permits. A proper notation referencing the approved development schedule shall be inscribed on a plan showing a development as defined in The Zoning By Laws Section 9-I-(2). Proof of recording must be shown to the Planning Board.
4. Endorsement of approval of the Definitive Plan shall be sought within sixty (60) days of the expiration of the twenty-day appeal period or within sixty (60) days after the entry of a final decree by the court sustaining the approval of the plan if appeal has been taken. If endorsement of approval is not sought within this sixty-day period, the approval of the Definitive Plan is automatically void by virtue of this condition and by the provisions of Section III-10-(a) of the Subdivision Rules and Regulations, and the Planning Board shall so notify the Town Clerk and the applicant.
5. The applicant shall record with the Norfolk Registry of Deeds, and in the case of registered land, with the Recorder of the Land Court, a copy of said Plan and any covenants, and shall submit evidence of such recording to the Planning Board as required in Section III-10-(c) of the Subdivision Rules and Regulations.
6. Within thirty (30) days after the return of an approved Definitive Plan, the applicant shall obtain and deliver to the Board or its Clerk, four (4) prints of said Plan, as so completed, for the Board's files and for subsequent distribution to appropriate Town Agencies, and one copy on transparent cloth of the layout plans and profiles of each proposed street, for the files of the Engineering Department. The applicant shall also submit to the Board three (3) sets of microfilm aperture cards showing the Definitive plan as approved by the Planning Board.
7. The developer will be held responsible for any regulatory traffic warning signs which may be needed after the development becomes occupied as required by the police department and for providing and installing "No Salt Zone" signs on Darwin Lane and Queens Court.
8. The street name signs shall be posted prior to the clearing of trees and, or, actual start of work on this subdivision.

Special Condition

1. An easement from Anthony J. DiTomasso and Helen DiTomasso (attached and labeled exhibit A) is to be recorded and is incorporated into this subdivision approval.

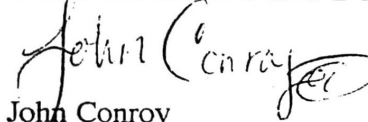
Said approval hereby incorporates waivers of the following design standards of the Subdivision Rules and Regulations:  
(NEED TO BE VOTED)

1. A waiver from Section V-6(a) of the Town of Walpole Rules and Regulations governing the Subdivision of Land to reduce the pavement width from 30 feet to 26 feet for all roads in the subdivision.
2. A waiver from Section V-8(a) of the Town of Walpole Rules and Regulations governing the Subdivision of Land to construct a sidewalk on one side only.
3. A waiver from Section IV-2-b of the Town of Walpole Rules and Regulations governing the Subdivision of Land to allow construction of a dead end street longer than 750 feet.

NOTE TO CLERK: The Planning Board should be notified immediately of any appeal to the Superior or Land court on this subdivision approval made within the statutory twenty (20) day appeal period. If no appeal is filed with your office, the Planning Board should be notified at the end of the twenty (20) day appeal period in order that the plans may be endorsed.

Very truly yours,

WALPOLE PLANNING BOARD



John Conroy  
Chairman

JCAcb

OPERATION AND MAINTENANCE PLAN AND COVENANT  
WITH THE  
TOWN OF WALPOLE

COPY

WHEREAS, Custom Colonial Homes, Corp., P.O. Box 661, Norwood MA 02062, is the owner of a parcel of land in Walpole, Norfolk County, Massachusetts, being shown as Lots 18 and 19 on a Subdivision Plan of land entitled, "Walpole Estates", by John R. Anderson & Associates dated Dec. 15, 1995, revised Aug. 13, 1996, recorded herewith, and;

WHEREAS, the land is to have a Retention Area, and Leaching Drywells 1 through 5, encompassing a portion of Lot 18 and Lot 19, which Landowner has agreed to construct and maintain.

NOW THEREFORE, in consideration of the approval of said subdivision plan, the Landowner hereby covenants for the faithful performance of the following terms and conditions, which terms and conditions shall be for the benefit of the Town of Walpole, its successors and assigns, and shall run with the land and shall be binding on the Landowner, its successors and assigns, in perpetuity.

1. The Landowner shall convey the Retention Area and Leaching Drywells 1 through 5 to the owners of said Lots 18 and 19, on which they are situated, subject to this covenant. The Landowner further covenants that the deed conveying the land or any portion thereof, shall contain the provisions of Paragraph #2 below.

2. The owners of Lots 18 and 19 shall be responsible for the maintenance, repairs, reconstruction, and replacement of said Retention Area and Leaching Drywells 1 through 5; including the following:

- a. Removal of debris and sediment within the Retention Area.
- b. Removal of any new growth of trees and shrubs on the side slopes or bottom of the Retention Area.
- c. Prevention of erosion of the side slopes of Retention Area.
- d. Prohibition of dumping of dry yard waste or filling of Retention Area.
- e. Inspection twice annually of the Retention Area and emergency spillway to insure maintenance as specified in items (a) through (d) above.
- f. Maintenance of the contours of the Retention Area so as to conform to the "lines and grades" established on the approved Definitive Subdivision Plan.
- g. Annually prevent and remove any new growth of trees within the immediate vicinity of the leaching structures.
- h. Annually maintain a free and clear path over the



"Access & Utility Easement" areas shown on the subdivision plan.

i. Annually inspect the leaching pits and remove any trash, debris and/or silt from the interior of the pits.

3. The owner of Lot 17 shall be subject to itmes 2a - 2h (above), in so far as they apply to the portion of the emergency spillway and Retention Area as is located on said Lot 17.

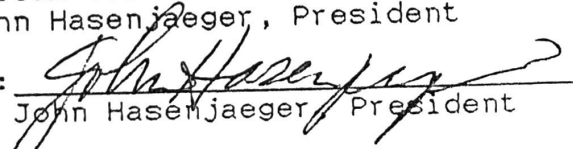
4. The Town of Walpole shall have the perpetual right, but not the obligation, to enter upon the "Access and Utility Easement" shown on Lots 18 and 19 on said Definitive Subdivision Plan for the purposes of emergency repairs or maintenance of the Retention Area but this shall not be construed to impose any legal obligation upon the Town to render such services. The Town shall be reimbursed for the cost of any such services that it renders on any pits, Retention Area, or easement, by the owners of the land upon which such pits and/or easement are situated.

5. This covenant may be extended by the Town pursuant to the provisions of M.G.L. Ch. 184, sec. 27 as it may be amended from time to time, upon written notice to the owners of the lots containing the Retention Area.

By recording of this covenant the Landowner, its heirs, successors, and assigns, acknowledges that the aforesaid agreements, covenants, restrictions, easements or conditions shall run with the land and agree with the provisions of said easements, covenants, restrictions, or conditions.

IN WITNESS WHEREOF, the said, Custom Colonial Homes, Corp., John Hasenjaeger, President presents to be signed, sealed and acknowledged, this 6th day of February, 1997.

Custom Colonial Homes, Corp.  
John Hasenjaeger, President

By:   
John Hasenjaeger, President

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

February 6, 1997

Then personally appeared before me the above-named John Hasenjaeger, President, and aknowledge the foregoing instrument to be his free act and deed.

  
Notary Public  
My Commission expires:

SUSAN H. LEMOIE  
Notary Public  
My Commission Expires May 20, 1997

FORM J

John Hasenjaeger, of 4 Fieldstone Path, Walpole, Norfolk County, Massachusetts, for consideration paid, grant to the Town of Walpole, municipal corporation in Norfolk County, Massachusetts, quitclaim covenants, the perpetual rights and easements to construct, inspect, repair, renew, replace, operate and forever maintain, water mains, sanitary and storm sewers, with any manholes, pipes, conduit and other appurtenances (including any related retention or detection basins, swales, and channels) thereto, and to do all acts incidental thereto, in, through and under the following described land:

The land located in Walpole, Norfolk County, Massachusetts, shown as Lots 26 and 27, on the plan entitled "Subdivision Plan of Land in Walpole, Mass.," dated August 13, 1996, Revised September 4, 1997, prepared by John R. Anderson & Associates and filed in Norfolk Registry District as Plan Number 4531L, as noted on Certificate of Title Number 154084, in Book 771, Page 84.

Also:

A 20 foot wide access and utility easement between Lots 9 and 10, as shown on said plan.

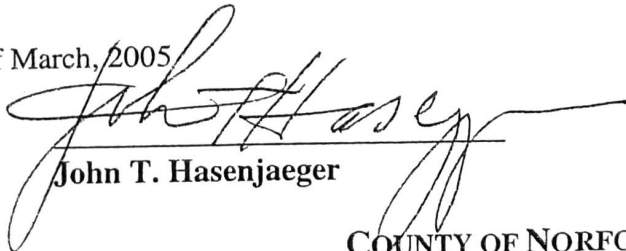
A 35 foot access and utility easement on Lot 17 as shown on said plan.

An access and utility easement on Lots 18 and 19, as shown on said plan.

And for the consideration aforesaid, the said grantor does hereby give, grant, sell, transfer and deliver unto the said grantee and its successors and assigns forever, all water and sewer pipes, manholes, conduits and all appurtenances thereto that are now or hereafter constructed or installed in, through or under the above described land by the grantor and the grantor's successors and assigns.

For grantor's title, see deed from Custom Colonial Homes in Norfolk County Registry District on Certificate of Title No. 154084.

Witness my hand and seal this 15<sup>th</sup> day of March, 2005

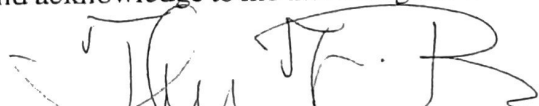
  
John T. Hasenjaeger

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF NORFOLK

On this 15<sup>th</sup> day of March, 2005, before me, the undersigned notary public, personally appeared **John T. Hasenjaeger**, proved to me through satisfactory evidence of identification, which is personal knowledge, to be the person whose name is signed on this document, and acknowledge to me that he signed this document voluntarily for its stated purpose.



  
Notary Public: Thomas F. Brady  
My Commission Expires: April 24, 2009

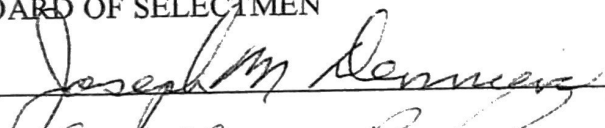
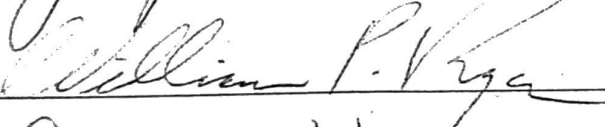
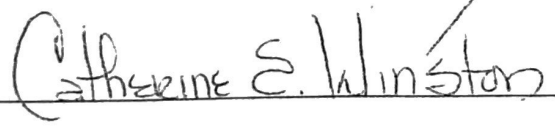

ACCEPTANCE OF  
OPERATION AND MAINTENANCE PLAN AND COVENANT WITH THE TOWN  
OF WALPOLE  
and FORM J CONVEYANCES OF EASEMENTS AND UTILITIES  
WALPOLE ESTATES-  
DARWIN LANE AND QUEEN'S COURT

Pursuant to the authority granted by the vote under Article 18 and 19 of Fall 2005 Annual Town Meeting, and of M.G.L. provisions as listed below, and of every other authority appertaining, we the undersigned Board of Selectmen of the Town of Walpole, hereby accept the Covenant/Conveyances/Easements as listed below:

- 1) Under authority of MGL Ch. 83, S. 4, acceptance of Operation and Maintenance Plan and Covenant with the Town of Walpole, , from John Hasenjaeger recorded with Norfolk County Land Court as document 885,310.
- 2) Under authority of MGL Ch. 83, S. 4 and Ch. 82, S. 21-24, and C. 40, S.14, Ch. 40, S. 4, Ch. 82, S. 21-24 and 33, acceptance Form J Conveyance of Easements and Utilities, , from John Hasenjaeger recorded with Norfolk County Land Court, as document 1,057,654.
- 3) Under authority of MGL Ch. 83, S. 4 and Ch. 82, S. 21-24, and C. 40, S.14, Ch. 40, S. 4, Ch. 82, S. 21-24 and 33, acceptance Form J Conveyance of Easements and Utilities, , from John Hasenjaeger recorded with Norfolk County Land Court, as document 1,085,545.

TOWN OF WALPOLE  
BOARD OF SELECTMEN

December 13, 2005

  
\_\_\_\_\_  
  
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\_\_\_\_\_  
  
\_\_\_\_\_  
\_\_\_\_\_

THE COMMONWEALTH OF MASSACHUSETTS

Norfolk ss

December 13, 2005

Then personally appeared the above named

BOARD OF SELECTMEN

Members of the Board of Selectmen of the Town of Walpole and acknowledged the foregoing instrument as the free act and deed of the Town of Walpole, before me.

*Ronald A. Havel*

Notary Public

My Commission Expires:

MY COMMISSION EXPIRES  
APRIL 17, 2009

Streetacceptances\fall2005\easementaccEPOATCNESWALESTATES  
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COPY

FORM I

RELEASE OF COVENANT

Walpole, Mass., 1-18, 1901

In consideration of the provision of an alternative performance guarantee, sufficient in the opinion of the Planning Board of the Town of Walpole to secure the performance of the construction of ways and installation of municipal services required by the covenant dated LATEST REVISION SEPT. 4, 1997, and recorded in Norfolk Registry of Deeds, Book \_\_\_\_\_ Page \_\_\_\_\_ (or registered in the Land Court as Document No. \_\_\_\_\_ and noted on Certificate of Title No. \_\_\_\_\_, in Registration Book \_\_\_\_\_, Page \_\_\_\_\_) for the following enumerated lots shown on a Plan entitled WALPOLE ESTATES SUBDIVISION recorded with said Registry of Deeds, Plan Book \_\_\_\_\_ Plan \_\_\_\_\_ (or registered in said Land Court, Plan Book \_\_\_\_\_, Plan \_\_\_\_\_), the undersigned, being a majority of the Planning Board, hereby releases the below designated lots from the restrictions as to sale and building specified within said covenant.

Lots 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 20A, 21, 21A, 22, 22A, 23, 23A, 24, 24A, 25, 25A

\* Plan Number 4531 L  
on Norfolk County Land  
Certificate of Title  
Number 154084 Book 771  
Page 84.

[Signature]  
Suzanne Murphy  
Edward F. Ry...  
[Signature]

Majority of the Planning Board  
of the Town of Walpole

COMMONWEALTH OF MASSACHUSETTS

Norfolk ss. 1-18-01, 1901

The personally appeared John Conway  
one of the above named members of the Planning Board of the Town of  
Walpole, Massachusetts, and acknowledged the foregoing instrument to be the  
free act and deed of said Planning Board, before me.

[Signature]  
Notary Public

My commission expires: 2-18-2005, 1905

COPY

Mr. John Hasenjaeger  
4 Fieldstone Path  
Walpole, MA 02081

SUBJECT: Walpole Estates  
Modification to a Definitive Subdivision Plan

Dear Mr. Hasenjaeger:

It is hereby certified by the Planning Board of the Town of Walpole, Massachusetts, that at a duly called and properly posted meeting of said Planning Board, held on November 6, 1997 it was voted **to approve modifications as required by the Land Court to a Definitive Plan entitled "WALPOLE ESTATES"**, dated August 13, 1996 and revised on September 4, 1997 drawn by John R. Anderson & Associates, 281 Mylod Street, Owned by Custom Colonial Homes, Corp., 492 Walpole Street (Suite 11), Norwood, MA originally filed with the Planning Board on March 20, 1996 concerning the property located off Common Street.

Said approval is granted in accordance with M.G.L. Chapter 41, Sections 81K-81GG, and the Town of Walpole Planning Board Rules and Regulations Governing the Subdivision of Land and the Issuance of Certain Special Permits (hereinafter referred to as the "Subdivision Rules and Regulations") and is subject to the following conditions:

Standard Conditions

1. The design of all detention basins shall be subject to the approval of the Conservation Commission and the Town Engineer, and any revisions to the design of any detention basins shall henceforth be subject to the approval of the Planning Board. In accordance with Section III-8-(c) of the Subdivision Rules and Regulations, the construction of the detention basins may be subject to incorporation into any cost estimates for the construction of ways and installation of municipal services upon which a performance guarantee will be based for the entire subdivision.

2. In accordance with Section IV-6-(d)-(7) and Section IV-6-(d)-(9) of the Subdivision Rules and Regulations, an Operation and Maintenance Plan and covenant for the detention basins shall be submitted to the Planning Board for approval prior to the execution of a Form I (Release of Covenant) for any of the lots within the subdivision. The applicant will make best efforts to submit this plan and covenant prior to endorsement of approval of the Definitive Plan.
3. In accordance with Section 9-I of the Zoning By Laws, the applicant has submitted to the Planning Board for approval a development schedule demonstrating to the reasonable satisfaction of the Planning Board the applicability of each design criteria for which the applicant seeks credit. The applicant will record the approved development schedule at the Norfolk County Registry of Deeds and file it with the Town Clerk prior to issuance of permits. A proper notation referencing the approved development schedule shall be inscribed on a plan showing a development as defined in The Zoning By Laws Section 9-I-(2). Proof of recording must be shown to the Planning Board.
4. Endorsement of approval of the Definitive Plan shall be sought within sixty (60) days of the expiration of the twenty-day appeal period or within sixty (60) days after the entry of a final decree by the court sustaining the approval of the plan if appeal has been taken. If endorsement of approval is not sought within this sixty-day period, the approval of the Definitive Plan is automatically void by virtue of this condition and by the provisions of Section III-10-(a) of the Subdivision Rules and Regulations, and the Planning Board shall so notify the Town Clerk and the applicant.
5. The applicant shall record with the Norfolk Registry of Deeds, and in the case of registered land, with the Recorder of the Land Court, a copy of said Plan and any covenants, and shall submit evidence of such recording to the Planning Board as required in Section III-10-(c) of the Subdivision Rules and Regulations.
6. Within thirty (30) days after the return of an approved Definitive Plan, the applicant shall obtain and deliver to the Board or its Clerk, four (4) prints of said Plan, as so completed, for the Board's files and for subsequent distribution to appropriate Town Agencies, and one copy on transparent cloth of the layout plans and profiles of each proposed street, for the files of the Engineering Department. The applicant shall also submit to the Board three (3) sets of microfilm aperture cards showing the Definitive plan as approved by the Planning Board.
7. The developer will be held responsible for any regulatory traffic warning signs which may be needed after the development becomes occupied as required by the police department and for providing and installing "No Salt Zone" signs on Darwin Lane and Queens Court.
8. The street name signs shall be posted prior to the clearing of trees and, or, actual start of work on this subdivision.

Special Condition

1. An easement from Anthony J. Ditomasso and Helen DiTomasso (attached and labeled exhibit A) is to be recorded and is incorporated into this subdivision approval.

Said approval hereby incorporates waivers of the following design standards of the Subdivision Rules and Regulations:  
(NEED TO BE VOTED)

1. A waiver from Section V-6(a) of the Town of Walpole Rules and Regulations governing the Subdivision of Land to reduce the pavement width from 30 feet to 26 feet for all roads in the subdivision.
2. A waiver from Section V-8(a) of the Town of Walpole Rules and Regulations governing the Subdivision of Land to construct a sidewalk on one side only.
3. A waiver from Section IV-2-b of the Town of Walpole Rules and Regulations governing the Subdivision of Land to allow construction of a dead end street longer than 750 feet.

**NOTE TO CLERK:** The Planning Board should be notified immediately of any appeal to the Superior or Land court on this subdivision approval made within the statutory twenty (20) day appeal period. If no appeal is filed with your office, the Planning Board should be notified at the end of the twenty (20) day appeal period in order that the plans may be endorsed.

Very truly yours,

WALPOLE PLANNING BOARD

John Conroy  
Chairman

JC:ff



# Exhibit B

Town of Walpole  
Commonwealth of Massachusetts



**Planning Board**

Edward Forsberg, Chairman  
Nancy Mackenzie, Vice Chairman  
John Conroy, Clerk  
Elizabeth Nashawaty, Member  
Robert Hirshom, Member

**Town Hall  
Room 212**  
135 School Street  
Walpole, MA 02081  
Phone (508) 660-7251  
Fax (508) 668-2071

*Christopher J. Ryan, AICP  
Town Planner*

November 2, 2005

Mr. Ronald Fucile, Town Clerk  
135 School Street  
Walpole, Massachusetts 02081

RE: **Kayla Court - Definitive Subdivision Decision**

Dear Mr. Fucile:

It is hereby certified by the Planning Board of the Town of Walpole, Massachusetts (hereinafter together with any entity succeeding the powers of said Planning Board, referred as the Board) that at a duly called and properly posted meeting of said Board held on October 20, 2005 it was voted 0-3-0 to approve a Definitive Plan entitled "Kayla Court" (Sheets 1 through 9), dated March 25, 2005 and last updated on May 17, 2005, drawn by Cubellis Saivetz Associates, Braintree, MA showing five (5) proposed lots on a private road.

This decision is in response to an application for approval of a Definitive Subdivision Plan submitted to the Planning Board:

Therefore, the motion to approve is denied in accordance with M.G.L. Ch 41, Section 81K-81GG and the Town of Walpole Planning Board Rules and Regulations Governing the Subdivision of Land and the Issuance of Certain Special Permits (hereinafter referred to as the "Subdivision Rules and Regulations").

The reason stated for the denial is that the waiver of the 750 foot maximum street length requirement was not granted; therefore, the subdivision could not go forward as the proposed street is longer than 750'.

A copy of this decision was filed with the Town Clerk on November 2, 2005.

**Note to Clerk:** The Planning Board should be notified immediately of any appeal to the Superior or Land Court on this denial of subdivision approval made within the statutory twenty (20) day appeal period. If no appeal is filed with your office, the Planning Board should be notified at the end of the twenty-day appeal period.

Very truly yours,

WALPOLE PLANNING BOARD

Edward Forsberg, Chairman

Copy to: M. Walker, Town Engineer  
J. Mee, Building Inspector  
Sewer and Water Commission  
Board of Health  
Conservation Commission  
Millbrook Corporation (certified mail)  
John Hasenjaeger, 23 Pinnacle Drive (certified mail)  
Darren Hasenjaeger, 23 Pinnacle Drive (certified mail)  
✓ David & Joanne Vlacich, 31 Darwin Lane (certified mail)

# Exhibit C

**October 10, 2019**

A meeting of the Board of Sewer & Water Commissioners was held on Thursday, October 10, 2019 at 7:00 p.m., at the Edward J. Delaney Water Treatment Plant, 1303 Washington St.

Present: William Abbott, John Spillane, John Hasenjaeger, Patrick Fasanello and Glenn Maffei. Also, Bernie Marshall, Supt. of Sewer and Water, Scott Gustafson, Asst. Supt. of Sewer and Water, and Rick Mattson, DPW Director.

All abatements submitted tonight is reviewed and signed.

### **7:00 ABRAHAMS GROUP – RATE STUDY UPDATE**

Matt Abraham is present and provides the Board members with a spreadsheet showing the actual and projected financial analysis. It is also on the screen so he can show the flexibility of the file that has been created. This screen shows the baseline analysis which is if there is not any rate related changes. It is typically referred to as the doing nothing theory. He feels they have done a decent amount of work and will update on the financial analysis and also the data analysis although he is not as far along as he had hoped and will explain why. He has worked with various town staff and they provided him with a lot of data and information. Going with expenses first Mr. Abraham goes line by line on his spread sheet. He starts with the expenditures and goes through them. These expenses will not affect retained earnings as they have already been allocated unless there were turn backs and then this money would go to retained earnings. He then talks on the long term debt which shows a big drop off by 2024. The next item he speaks of is his projections based on the capital plan. Also related to the capital plan is the short term debt. Mr. Abraham then talks about revenues and says this is hard to predict and therefore relies on historical data. They have the actuals for fiscal years 17, 18 and 19 and then relied on a 3 year average for the future. He says the user charges are the hardest to predict because there are a lot of factors that affect it such as the weather. Mr. Hasenjaeger asks if the budgeted figure was an aberration and Mr. Abraham answers not necessarily although they did seem a little high to him based on the recent past and knowing the usage is down a bit. He then refers to the section of his sheet known as the retained earnings summary table. The \$2.776 m is the most recent certification of retained earnings and then based on his analysis and projections they are projecting what the retained earnings might be and it is based on a lot of assumptions. Based on a lot of assumptions he expects retained earnings to dwindle over the next few years and be out by 2022 or 2023. Mr. Fasanello speaks of the indirect costs that go up 4.5% yearly and the town budget only goes up 2.5%. He would like to know why. Mr. Abraham says the actuals of the indirect costs in the previous years he felt 2.5% was low. However this is for now, when he talks to the Town Accountant this may be adjusted. Mr. Fasanello feels the percentage should be in sync with the Town budget. Mr. Abraham says he cannot answer that. Mr. Abbott says it goes up 2.5% plus new growth which adds on top of the 2.5% without an override. Mr. Abbott asks Mr. Abraham when he feels he would complete this part of the project. Mr. Abraham responds that the financial part should be complete once he gets the blessing from the Town Accountant which should be in about a week. Mr. Abraham shows another screen on the overhead and tells that it shows the capital plan that was provided by the Water Department and they are numbered with the name of the project and the cost. He has built this sheet with a lot of flexibility and explains how and why it can include things and not include certain expenditures. Mr. Abbott asks if it has the ability to postpone for a year or two and Mr. Abraham shows how this can be done. He then asks if this is something the Town would get ownership of and be used and Mr. Abraham says yes. He just wants the Board to know that this sheet can be adjusted accordingly. The other thing that he wanted to show the Board is the first shot at the impact of rate changes and the ability to play around with rate changes. He shows a sheet showing the baseline in table format and graph format and it shows the surplus or deficit in a certain year, another row shows the retained earnings as the percent of budget. There is also a tab to show the results of the rate changes. These numbers are based on a lot of assumptions. The update on the billing is when they met previously they talked about how they have the ability to work with the Munis system and extract data out of the system. He worked with Judy in the Water Dept. and learned that the report that he had planned on using was not possible for the Town of Walpole

because the data system was just too large. The history of the accounts goes back 20 to 25 years and considering how many accounts there are; this is an inefficient way as you search through everything before you can ask for specific dates. So they had to come up with a different way and this was to look at the actual commitments. They were able to go into Munis and print PDF's of the commitments but there were over 100 of them. Then to get the PDF's into Excel is a tedious process however he is at the point now that he has it working and has loaded 5 in so far. He is hopeful he will have a full billing file within a week or week and half have some numbers for tiers by the next time we meet. Mr. Abbott asks when he would expect to meet with the Board again and be able to change the blocks, and show what the ranges are and rates, etc. Mr. Abraham says he believes he is on the agenda for the next meeting. Mr. Abbott says one of the concerns is because they are not taking in as much revenue as expected due to the fact they are not pumping as much water, so they will probably have to have a midyear rate adjustment. He feels the sooner he can provide the information the better as it would have less impact. Mr. Maffei says he is more interested in the billing analysis and wants to make sure when Mr. Abraham comes back he addresses answers to the issue of the multi units and incorporate this as well as the block rate which should be part of the analysis. Mr. Fasanello says although we have to reach a certain goal with the rates, there is more than one way to get to the number and he would like to see different scenarios. Also we are not mandated to have block rates, we could come up with something else and he would like to see alternatives. Mr. Abraham will return on October 28<sup>th</sup>.

### **ARTICLE 12 FALL ANNUAL TOWN MEETING**

Mr. Hasenjaeger recuses himself from Article 12 and leaves the meeting and never returns. Present for this discussion is Darren and Bryar Hasenjaeger. Mr. Abbott gives the background and tells of the meeting that he and Mr. Maffei had previously with Mr. and Ms. Hasenjaeger regarding the purpose of attempting to sell property at the end of Darwin La. that is owned by them. Mr. Abbott says he knows they prepared a paper that was titled Article 12 Protection Opportunity and he got his copy at the FinCom. Mr. Hasenjaeger says he inherited the land off of his father who is looking to retire. He hasn't done much with it; he looked into putting some houses back there but didn't go too far with it. They were approached about a year ago for someone to do a large scale development 40B on the land. He thought before taking this offer he would go before the Town to see if they had any interest for well protection as it abuts Well #5 and the aquifer and this is when the back and forth started with Administration and some of the Board members. He says the Town Administrator had an appraisal done that he is not privy to. He says he is aware of the market value and in the meantime another offer has come to him significantly higher than what he has proposed to the Town and within the last week there was another offer. He is very aware of the market value and provides numbers of the State standards which put a value on this property upwards of \$1 million. The offers he received have been in this range. He says he would rather see the Town have it for well protection and to keep abutters, neighbors and townspeople happy. Mr. Abbott says the parcel itself is a land locked parcel and this would have a value of \$40,000 and with access \$400,000. Mr. Hasenjaeger says they have the front piece so access is not an issue. Mrs. Hasenjaeger says there is a 35 foot easement in the deed and it is not land locked. There is some discussion on access, appraised value and assessed value. Mrs. Hasenjaeger says she got her hands on the IEP Aquifer Study and cites a portion of it and then says this land protects 6 wells and for \$379,000 it's protected forever. As a former RTM member she looks back on the money spent for different projects. She feels this seems extremely logical and realistic over some of the other projects that money was spent on. Mr. Fasanello remembers the study and their consultants suggested the purchase of certain lands, one was Jarvis Farm and another was this piece of land. He believes we already have an encumbrance on it. This is a piece of property that is fairly important for aquifer protection. That being said, he does not know how much it is worth. Mr. Abbott says if we acquire it then we wouldn't care about access. Mr. Fasanello says he is not interested in paying what was offered he believes it is excessive, we should think about taking it by eminent domain and let the judge decide. Mr. Abbott says then these would be market value. Mr. Spillane would like the property but is concerned on the price. Mr. Maffei wonders what the value of water protection is and keeping it from being built upon, he would be in support of obtaining the land but we need to keep it affordable. He would be open to improving the number if others were open to it. Mr. Abbott says we all would like the land but cost is the issue and we should keep in mind how much protection we would be getting as we have 3 houses on Washington St. and houses at the end of Darwin La., and 1 or 2 at the end of Eleanor Rd. The main concern is the price. Mrs. Hasenjaeger speaks about the

amount spent on Jarvis Farm and how the IEP Report rated it #3 and their property #1. Mr. David Vliach from 31 Darwin Lane says he does not care what is paid, he does not want a 40B there and the biggest issue would be concern over contamination. **Motion Made** by William Abbott to act with favorable action so there can be some discussion. Mr. Abbott then withdraws his motion. **Motion Made** by Glenn Maffei to reiterate our offer of \$150,000. Second by William Abbott. Vote 2-2-0, Spillane and Fasanello against. There is no vote. Mr. and Mrs. Hasenjaeger leave the meeting.

### **ARTICLE 18 FALL ANNUAL TOWN MEETING**

Mr. Abbott and Mr. Moraski discuss what transpired with this article at the Finance Committee. Mr. Moraski tells of the opinion from Town Counsel and his counter to this opinion and the Counsel's response to his counter. He says he basically summarized the Town Charter and Mass General Laws which would give town meeting the power to create bylaws and to do what's in the article. Town Counsel cited a portion of the Mass General Laws that allows the Board of Selectmen to enter into an intermunicipal agreement. The Finance Committee voted to remand the article back to him because he is still in the middle of researching with a representative a legislature. He is asking this Board to also remand the article back to him. He says if it is illegal then the article will just go away on its own. Mr. Abbott points out that the Town Charter says that this Board has exclusive charge and control so he wonders if the Town Charter would need to be changed. Mr. Spillane says he appreciates what Mr. Moraski is doing however he does not want Town Meeting involved in who we can sell water to. He feels we have experts here and he does not feel town meeting knows enough about the water supply. There is some discussion on this. Mr. Fasanello says under Mass General Laws these Boards were set up to protect the people. This Board makes policy and watches the money, among other things. He adds that they try to provide the Walpole residents with the best water they can at the cheapest price. Mr. Moraski says the bottom line is that he does not believe he would be done with his research by town meeting. He is respectfully asking the board to remand the article back to him. **Motion Made** by William Abbott to recommend that Article 18 of the FATM be referred back to committee. Additionally, the Board would like to state that this Board has concern of the Town Charter stating that this Board has exclusive charge and control over the Water Department and the system. Second by Patrick Fasanello. Vote 4-0-0.

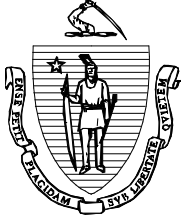
Mr. Mattson asks that the Board be clearer on their position on Article 12. **Motion Made** by William Abbott based on the earlier vote this Board recommends to the Finance Committee that the Sewer & Water Commission takes no action on Article 12 of the FATM. Second by John Spillane. Vote 3-1-0, Maffei against.

**Motion Made** by Patrick Fasanello to adjourn. Second by Glenn Maffei. Vote 4-0-0. Meeting adjourned at 8:15 p.m.

*Accepted November 25, 2019*

# Exhibit D





Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Jennifer D. Maddox, Undersecretary

November 24, 2021

Mr. John Lee, Chair  
Walpole Zoning Board of Appeals  
Town of Walpole  
325 Main Street  
Walpole, MA 01540

*Re: Walpole Safe Harbor Decision, Residences at Darwin Commons, Darwin Lane, Walpole, MA, Certified Housing Production Plan as Defined under 760 CMR 56.03(1)(b) and 56.03 (4).*

Dear Mr. Lee:

The Department of Housing and Community Development (DHCD) is in receipt of an October 31, 2021, letter from Louis Petrozzi, President of Wall Street Development Corporation, (Applicant), which has proposed a Chapter 40B project known as Residences at Darwin Commons, Darwin Lane, Walpole, MA. The Applicant challenges the October 18, 2021 letter by the Walpole Zoning Board of Appeals (Board), which notified the Applicant that the Board considers the denial of the Applicant's application for a Comprehensive Permit to be consistent with local needs.

The Board claims that the denial is consistent with local needs based on the following assertion: certified Housing Production Plan (HPP) as defined under 760 CMR 56.03(1)(b) and 56.03 (4).

**Procedural Background: 760 CMR 56.03(8)**

Pursuant to 760 CMR 56.03(8), if a Board considers that, in connection with an Application, a denial of the permit or the imposition of conditions or requirements would be consistent with local needs on the grounds that the *Statutory Minima* defined at 760 CMR 56.03(3)(b) or (c) have been satisfied or that one or more of the grounds set forth in 760 CMR 56.03(1) have been met, it must do so according to the following procedures. Within 15 days of the opening of the local hearing for the Comprehensive Permit, the Board shall provide written notice to the Applicant, with a copy to the Department, that it considers that a denial of the permit or the imposition of conditions or requirements would be consistent with local needs, the grounds that it believes have been met, and the factual basis for that position, including any necessary supportive documentation. If the Applicant wishes to challenge the Board's assertion, it must do so by providing written notice to the Department, with a copy to the Board, within 15 days of its receipt of the Board's notice, including any documentation to support its position. The Department shall thereupon review the materials provided by both parties and issue a decision within 30 days of its receipt of all materials.

The Board shall have the burden of proving satisfaction of the grounds for asserting that a denial or approval with conditions would be consistent with local needs, provided, however, that any failure of the Department to issue a timely decision shall be deemed a determination in favor of the municipality. This procedure shall toll the requirement to terminate the hearing within 180 days.

**Regulatory background: Certified Housing Production Plan as Defined under 760 CMR 56.03(1)(b) and 56.03(4) (c) and(f):**

760 CMR 56.03(1): *A decision by a Board to deny a Comprehensive Permit... shall be upheld if one or more of the following grounds has been met as of the date of the Project's application... (b) the Department has certified the municipality's compliance with the goals of its approved Housing Production Plan, in accordance with 760 CMR 56.03(4).*

760 CMR 56.03(4)(c): *Affordable Housing Goals. The HPP shall address the matters set out in the Department's guidelines, including: 1. a mix of types of housing, consistent with local and regional needs and feasible within the housing market in which they will be situated, including rental, homeownership, and other occupancy arrangements, if any, for families, individuals, persons with special needs, and the elderly; 2. a numerical goal for annual housing production, pursuant to which there is an increase in the municipality's number of SHI Eligible Housing units by at least 0.50% of its total units (as determined in accordance with 760 CMR 56.03(3)(a)) during every calendar year included in the HPP, until the overall percentage exceeds the Statutory Minimum set forth in 760 CMR 56.03(3)(a).*

760 CMR 56.03(4)(f): *Certification of Municipal Compliance. A municipality may request that the Department certify its compliance with an approved HPP if it has increased its number of SHI Eligible Housing units in an amount equal to or greater than its 0.5% production goal for that calendar year. SHI Eligible Housing units shall be counted for the purpose of certification in accordance with the provisions for counting units under the SHI set forth in 760 CMR 56.03(2). Requests for certification may be submitted at any time, and the Department shall determine whether a municipality is in compliance within 30 days of receipt of the municipality's request. If the Department determines the municipality is in compliance with its HPP, the certification shall be deemed effective on the date upon which the municipality achieved its numerical target for the calendar year in question, in accordance with the rules for counting units on the SHI set forth in 760 CMR 56.03(2). A certification shall be in effect for a period of one year from its effective date. If the Department finds that the municipality has increased its number of SHI Eligible Housing units in a calendar year by at least 1.0% of its total housing units, the certification shall be in effect for two years from its effective date.*

**Notice Requirements under 760 CMR 56.03(8)**

DHCD finds that the Board submitted notice to the Applicant within 15 days of opening the local hearing (October 13, 2021) through its October 18, 2021 letter. DHCD notes copies were sent to DHCD via certified mail and electronic mail. DHCD finds that the Applicant challenged the Board's assertion within the proper timeframe, 15 days from receipt of the City's notification, through its October 31, 2021 letter. DHCD notes copies were sent to DHCD via certified mail and electronic mail. DHCD notes that although the State of Emergency has ended, DHCD continues to request electronic submission of documents.

**The Board's Submission**

The Boards submission consisted of an October 18, 2021 notification letter and an attachment. The attachment was the September 10, 2021 DHCD HPP Certification Approval letter. In the September 10, 2021 DHCD letter the following findings were made:

1. *Walpole has a valid HPP. The effective date for the HPP is April 23, 2019, the date that DHCD received a complete plan submission. The HPP has a five-year term and will expire on April 22, 2024.*
2. *The project for which certification was requested is known as Cedar Crossing/ Cedar Edge (SHI ID# 10582) which consists of 226 SHI units.*
3. *DHCD finds that the units are eligible for SHI inclusion and have been added to the SHI. The number of SHI units (226) is enough for a two-year certification period (90).*
4. *The certification period will run from April 27, 2021 to April 26, 2023.*

### **The Applicant's Submission**

The Applicant's submission consisted of an October 31, 2021 formal appeal letter with various exhibits. The Applicant challenges the validity of the September 10, 2021 Certification determination, including the number of SHI-eligible units and utilization of 2010 Census Data. The Applicant claims that Cedar Crossing (212 rental units, of which 53 are to be restricted as affordable, and 212 units are counted on the SHI ) and Cedar Edge (56 ownership units, of which 14 are to be restricted as affordable, and 14 units are counted on the SHI) should be considered one project in determining the numbers of SHI Eligible Housing units. The Applicant argues that the project is not consistent with the HPP's "high priority local needs" and therefore is not "consistent with local needs" as provided for in c. 40B.

The Applicant further states that DHCD lacks the mandate to issue regulations granting safe harbor beyond the Statutory Minima created under Chapter 40B in 1969. The Applicant is critical of the Walpole's implementation of the HPP and DHCD's lack of "due diligence" in oversight of the Town's affordable housing initiatives. The Applicant also points out the amount of funds the Town has dedicated to major projects and "open space" preservation (whilst not investing in affordable housing initiatives). Finally, the Applicant argues that its application was constructively approved due to its claim that the Board failed to open the public hearing in a timely manner.

### **Findings and Discussion**

DHCD reminds both parties that this decision is focused on the narrow scope of "safe harbor" assertion procedures outlined in the regulations under 760 CMR 56.03(8).<sup>1</sup> Therefore, DHCD will not address the opening of the public hearing in a timely manner or constructive approval. The appropriate venue for that matter is the Housing Appeals Committee (HAC).

### **Subsidized Housing Inventory (SHI)**

DHCD finds that the use of the 2010 Census Data (for HPP Goal and the SHI) is appropriate since the 2020 Census data necessary for DHCD to determine "year-round" housing units in accordance with the regulations at 760 CMR 56.03(3)(a) has yet to be released by the U.S. Census Bureau.<sup>2</sup> DHCD also finds that the number of SHI Eligible Housing units detailed in the September 10, 2021 DHCD Certification Approval letter are consistent with DHCD regulations and G.L. c. 40B Guidelines<sup>3</sup> (the "guidelines"). DHCD's counting policy reflected in the guidelines provides for inclusion of 100% of units in a rental development on the SHI if at least 25% of the units are affordable

<sup>1</sup> Although the Applicant alleges that, in addition to not meeting the HPP certification safe harbor, the Board had not met the requirements of 760 CMR 56.03(5) regarding recent progress towards a municipality's Statutory Minima, since the Board did not assert the "recent progress" safe harbor, DHCD need not make a determination on such recent progress.

<sup>2</sup> The Subsidized Housing Inventory (SHI) is used to measure a community's stock of low- or moderate-income housing for the purpose of M.G.L. Chapter 40B. Please note, the SHI has not yet been updated to reflect 2020 Census figures. The 2020 Census Redistricting Data (Public Law 94-171) Summary File that has been released by the U.S. Census Bureau does not include data on vacant "seasonal, occasional, or recreational use" units used by DHCD to determine Census "year-round housing units" for the SHI. The SHI will therefore continue to reflect the 2010 Census Year-Round Housing unit figures until such data is released.

<sup>3</sup> Available at <https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf>.

to households earning at or below 80% of the Area Median Income (or alternatively, if at least 20% of the units are affordable to households earning at or below 50% of the Area Median Income) and otherwise meet SHI eligibility criteria.<sup>4</sup> This counting policy has been in effect for over thirty years and has been recognized by the Housing Appeals Committee (see, e.g., *AvalonBay Communities, Inc. v. Hingham Zoning Board of Appeals*, No. 12-03, slip op. at 4-5 (Mass. Housing Appeals Committee, January 14, 2013)). The guidelines, in providing criteria by which all units in a rental development may count on the SHI, do not suggest that a rental development must encompass all units covered under a single comprehensive permit. Moreover, the Subsidizing Agency may subject rental and ownership units permitted under a single comprehensive permit to separate and distinct requirements, as is expected for Cedar Crossing and Cedar Edge since MassHousing imposes separate regulatory agreements for ownership and rental developments.

### HPP Certification

DHCD finds that its certification of Walpole's HPP was proper. A minimum of 90 SHI-eligible units were needed to achieve a two-year certification, and DHCD deemed 226 units to be SHI-eligible in accordance with the counting policy under the guidelines. Furthermore, such units initially became SHI-eligible in the calendar year in which certification was sought pursuant to 760 CMR 56.03(4)(f) and the guidelines.<sup>5</sup> DHCD also notes that the regulatory provision for the HPP certification safe harbor, although not expressly contained in the c. 40B statute, has been upheld by the Housing Appeals Committee. See, e.g., *Alexander Estates, LLC v. Billerica Board of Appeals*, No. 05-14, slip op. at 5 (Mass. Housing Appeals Committee, March 27, 2006 (finding the HPP certification safe harbor a "legitimate exercise of DHCD's regulatory power to advance a program for open and adequate housing by employing sophisticated policy considerations in refining and interpreting the concept of consistency with local needs, and it is consistent with the purpose and intent of the Comprehensive Permit Law"))).

Lastly, as Massachusetts is a Home Rule state, each city and town control its own zoning and has significant discretion in the allocation of funds. DHCD has limited regulatory oversight of implementation of HPPs other than certifying compliance based on creation of SHI Eligible Housing, and cannot require communities to allocate funds towards affordable housing, adopt zoning changes, or create and staff a housing trust or partnership. DHCD can, however, incentive creation of subsidized housing in accordance with Chapter 40B, as it has done through HPP certification and other initiatives. Here, the Town of Walpole set a goal of expanding the supply of affordable rental and ownership units, which it accomplished in issuing a comprehensive permit for Cedar Crossing and Cedar Hill.

### Conclusion

DHCD finds the board has met its burden of proving satisfaction of the grounds for asserting the certified Housing Production Plan safe harbor as defined under 760 CMR 56.03(1)(b) and 56.03(4). If either the Board or the Applicant wishes to appeal this decision pursuant to 760 CMR 56.03(8), that party shall file an interlocutory appeal with the Housing Appeals Committee (HAC) on an expedited basis, pursuant to 760 CMR 56.05(9)(c) and 56.06(7)(e)(11), within 20 days of its receipt of the decision, with a copy to the other party and to the Department.

DHCD notes the HAC issued "Standing Order 2020-01: Filing and Service in Cases before the Committee" and "Housing Appeals Committee Rules for Electronic Filing," both of which became effective April 15, 2020 and have been posted on the Committee's webpage at <https://www.mass.gov/service-details/housing-appeals-committee-hac>.

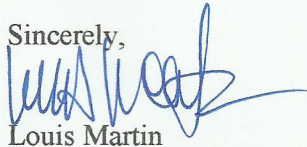
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<sup>4</sup> Section II.A.2(b)(1) of the guidelines.

<sup>5</sup> Section II.B(6) of the guidelines.

If you have further questions, please contact Phillip DeMartino, Technical Assistance Program Coordinator, at (617) 573-1357 or [Phillip.DeMartino@mass.gov](mailto:Phillip.DeMartino@mass.gov).

Sincerely,



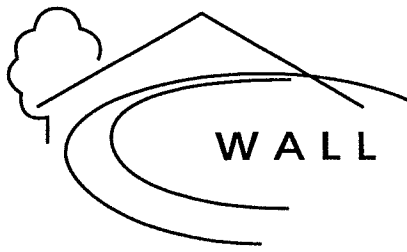
Louis Martin

Director

Division of Community Services

cc: James Johnson, Town Administer, Walpole  
George Pucci, Esq., Town Counsel, Walpole  
Patrick Deschenes, Director of Economic Development, Walpole  
Louise Petrozzi, President, Wall Street Development Corporation  
Dean Harrison, Affordable Housing Consultant  
Jay Talerma, Esq., Meade, Talerma & Costa

# Exhibit E



**WALL STREET DEVELOPMENT CORP.**  
REAL ESTATE DEVELOPERS

August 14, 2022

Mr. John Conroy, Chairman  
Walpole Planning Board  
135 School Street  
Walpole, MA 02081

**VIA EMAIL AND REGULAR MAIL**


RE: Darwin Lane – Proposed Development

Dear Mr. Chairman and Members of the Board:

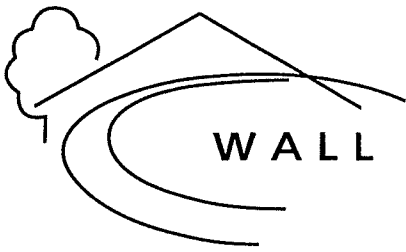
As you may know, Wall Street Development Corp. (“Wall Street”) has filed an application for a Comprehensive Permit pursuant to M.G.L. C. 40B (the “40B Application”) calling for the development of 28 townhouse condominiums on Darwin Lane. Recently, the Department of Housing and Community Development (“DHCD”) determined that the town’s “safe harbor certification” had been suspended, clearing the way for the 40B Application to proceed through the 40B permit process with the Zoning Board of Appeals (the “ZBA”).

The ZBA filed an appeal of DHCD’s decision that the town’s safe harbor certification had been suspended, however it does not seem likely based on historical cases, that DHCD’s decision will be reversed. In any event, during the interim period while the ZBA appeal is being undertaken, it might be an opportune time to engage in some dialogue regarding an alternative development concept for the property, specifically, a conventional subdivision on the property. Following recent communications with the Director of Economic Development and the Town Administration, Wall Street has been encouraged to initiate this dialogue with the Planning Board.

In order to develop this property as a conventional subdivision would require the extension of Darwin Lane approximately 250’ – 275’+/- beyond its current length, resulting in 4 additional building lots. This proposal would require a waiver from Section IV-2 (a) of the Board’s Subdivision Rules and Regulations (the “Regulations”) regarding the maximum length of a dead street.



P.O. BOX 272, WESTWOOD, MA 02090  
TEL. 781 440 0306 CELL. 617 922 8700  
EMAIL [Lou@wallstreetdevelopment.com](mailto:Lou@wallstreetdevelopment.com)  
[www.wallstreetdevelopment.com](http://www.wallstreetdevelopment.com)



**WALL STREET DEVELOPMENT CORP.**  
REAL ESTATE DEVELOPERS

Walpole Planning Board  
August 14, 2022  
Page 2

Wall Street understands the Board takes the granting of this waiver very seriously and places a heavy emphasis on the discretion and/or recommendation of the Walpole Fire Department when such a waiver has been requested in the past. However, given the circumstances, it might be in Wall Street's and the neighborhood's the best interest to have a discussion with the Board regarding this possible waiver. And, of course, should the waiver be granted, Wall Street would be pleased to substitute the conventional subdivision for the 40B development.

With this in mind, it would be appreciated if this matter could be scheduled for an informal discussion with the Board at its next scheduled meeting.


Thank you for your consideration.

Sincerely,

**WALL STREET DEVELOPMENT CORP.**

Louis Petrozzi, President

cc. John Conroy – Planning Board- [jconroy@federalconcrete.com](mailto:jconroy@federalconcrete.com); [judcon74@aol.com](mailto:judcon74@aol.com)  
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# Exhibit F

## WALPOLE PLANNING BOARD MINUTES OF DECEMBER 1, 2022

A regular meeting of the Walpole Planning Board was held on Thursday, December 1, 2022 at 7:00 p.m. in the Town Hall Main Meeting Room. The following members were present: John Conroy, Chair; John O'Leary, Vice Chair; Catherine Turco-Abate, Clerk; Philip Czachorowski and Carl Balduf, Town Engineer.

Mr. Conroy opened the meeting at 7:00 p.m.

**7:02 p.m. Home for Little Wanderers, Lots 1-5 Joint Scenic Road Hearing:** The Town of Walpole Tree Warden, Justin Monta was present for the joint scenic road hearing. Mr. Conroy read the public hearing notice. John Glossa, Glossa Engineering represented the applicant. Ms. Abate stated this is advertised as one piece of land comprised of five lots. She questioned if we have an issue with one of the lots, what happens to the other four and how would we vote this. Mr. Conroy they have to all be voted favorably or one would take the whole thing down. He asked who owns these lots and Mr. Glossa stated The Home for Little Wanderers. Mr. Conroy stated they do presently have access to their lots through The Home for Little Wanderers and owned by one person. The purpose of a Scenic Road Hearing is for access. Mr. Glossa stated that the people who want to buy these want to make sure they have all permits in place. That is the dilemma. Mr. Conroy stated he has never done it like this. The purpose is to keep a Scenic Road from getting carved up. He asked if the Home for Little Wanderers owns everything right now and Mr. Glossa stated yes Mr. Glossa feels the Board is creating this dilemma. Mr. Conroy stated that Scenic Roads have been considered as a hardship access in the past, but there is no hardship here as they already have access. Also, he doesn't see any locations for driveways shown on the plan. Mr. Conroy stated the homeowner could go back and change the location if they wanted to. Mr. Glossa agreed they can come back to Planning for that change. Mr. Conroy stated the plan doesn't show metes and bounds and Mr. Glossa stated he can change that. Mr. Glossa stated the buyers want some assurances before making any purchases that they are going to have proper access. Mr. Glossa stated that three out of the five lots already have a wide enough opening. They want to move the stone walls as little as possible.

Lot 1: Mr. Glossa stated this is next to the Walpole Sportsmen's Club driveway. He stated that Carl Balduf, Justin Monta and himself have walked this site. Lincoln Road is a county layout that dates back to 1932. The layout line and the lot line are in the same location. Also, the paved portion of Lincoln Road was never widened to match the layout and the wall for Lot 1 is pretty much buried.

Lot 2: The owner of the property gave a license to the Walpole Sportsmen's Club to allow electricity to be brought to their site. You can drive in there now.

Lot 3: This lot has a formal entrance on site but the trees are rather close.

Lot 4: There is no formal entrance.

Lot 5: Mr. Glossa has discussed this lot with Carl Balduf as the stone walls and trees are not within the county layout. Mr. Balduf thought the town layout was between the walls and therefore it would be safer to remove 10' of the stone wall.

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Mr. Conroy asked if the ANR plans are recorded and Mr. Glossa stated yes. Mr. Conroy asked why there are no street numbers shown and Mr. Glossa stated there won't be any numbers assigned until permits are pulled.

Mr. Balduf discussed his comments.

Justin Monta, Walpole Tree Warden stated the trees to be removed have been posted for two weeks. In his opinion, he would like these trees removed safely.

Mr. O'Leary doesn't see a problem holding this hearing for all five lots. Ms. Abate stated that a person on Lincoln Road called her and asked her how the stones will be relocated. Mr. Glossa stated they will not be removed, but will frame the driveways. Mr. Czachorowski stated he has no problems with the plans or lots.

Brenda Mosekich, 460 Lincoln Road stated it looks like the five lots will be across the street from her driveway and asked if the openings will interfere with anyone else. Her mailbox and a telephone pole is also there. She asked why the opening needs to be more than what is there now. Also, the street grading the way it is now is already eroding her property and still taking away more erosion. Mr. Glossa stated they will be removing on the town side and closer to the pond. Ms. Mosekich was okay with that. Mr. Conroy stated it is not up to us to make sure someone is comfortable with buying land. He stated that Mr. Glossa has already said that the new owners can come in later and change this and Mr. Glossa stated yes. Mr. Conroy stated we might have five different locations next year. Also, Lot 5 should not be before us as there are no trees or walls on town property. Mr. Glossa stated Mr. Balduf has to issue a curb cut permit.

Mr. O'Leary moved to continue this so we can get a revised plan showing the street numbers and dimensions showing where the driveways will be placed. Motion seconded by Czachorowski and voted 3-1-0 (Mr. Conroy voted against the motion).

**7:50 p.m. East Walpole Clocktower Continued Hearing:** Mr. Conroy moved to accept an extension of time up to and including January 31, 2023 as per a letter from Dan Merrikin, Legacy Engineering. Motion seconded by Ms. Abate and voted 4-0-0. Mr. Conroy continued this hearing to January 19, 2023 at 7:15 p.m. as requested.

**7:52 p.m. Northwoods Subdivision, Delaney/Dover Drive Continued Hearing:** Mr. Conroy moved to accept an extension of time up to and including January 31, 2023 as per a request from the applicant's engineer, Rob Truax. Motion seconded by Mr. Czachorowski and voted 4-0-0. Mr. Conroy continued this hearing to January 19, 2023 at 7:20 p.m.

**7:54 p.m. Patrick Deschenes re: Discussion of Proposed Zoning Articles:** Mr. Deschenes presented ten draft zoning articles to the board. After a brief discussion of each proposed article, Mr. Deschenes asked if the board would vote to sponsor these articles for the Spring town meeting. Mr. Conroy stated we need to have the actual articles that are ready to go forward. Even if the board votes to sponsor these articles, it doesn't mean we will support each one. Mr. Deschenes stated he would like to come back to the board in January with articles that have been finalized.

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**8:30 p.m. Darwin Estates Preliminary Plan:** John Glossa, Glossa Engineering was present as was the applicant, Lou Petrozzi. Mr. Conroy stated this is not a public hearing and our actions are not binding. We also need to see both a non-waiver plan and a waiver plan as you can't ask to waive something you can't do. With regard to the 750' street length, the Walpole Fire Department doesn't want anything beyond 750' even if the houses have sprinklers and the Planning Board has always supported the fire department. This is also true for 40-B's. The fire department wants 750' whether or not it is for a subdivision, 40-B or a site plan. Mr. Conroy asked Mr. Glossa if they are beyond 750' now and Mr. Glossa stated yes. Mr. Conroy asked if they have a waiver plan and Mr. Glossa stated no. Mr. Conroy stated that because they are presently beyond 750' we need two plans, a waiver plan and a non-waiver plan.

Ms. Abate stated we will not go against public safety and she doesn't understand why they are before us tonight. Mr. Conroy again asked if they have a non-waiver plan tonight and Mr. Glossa stated no. He stated they are only trying to show this is a buildable subdivision. Mr. Conroy stated it does not meet the requirements of the board's Rules and Regulations. Mr. Glossa asked if they will be allowed to present tonight. Mr. Conroy stated they knew they couldn't do this coming in. If this was buildable, why didn't John Hasenjaeger do it before. He will do whatever the board wants to do. Mr. O'Leary stated it would be a waste of time to go forward. Ms. Abate agrees it is a waste of time because of what is in front of us. Mr. Czachorowski stated he doesn't mind listening to the presentation. Mr. Conroy stated we all know, regardless of how we vote, this means nothing. Mr. Glossa stated the process is that anyone is entitled to present their plan in front of the board. He feels the board's comments should be said at the end of this process, not the beginning. Mr. Conroy stated Mr. Glossa wants the board to look at something that can't be built.

Mr. Glossa stated he is moving forward tonight. He stated there is a 34' drop down to the property in question. Darwin Lane has both water and sewer. Mr. Czachorowski asked how far the well head is from the property line and Mr. Glossa stated 400'. Everything meets the Planning Board's Rules and Regulations other than the length of the street. Drainage would be collected just before the cul-de-sac in some device that will allow the water to recharge back into the ground. A pump system is not uncommon in Walpole.

Mr. Balduf read his comments. He feels this should be filed as an 81-W as a change to the original subdivision.

Ms. Abate stated she is all set. Mr. Czachorowski asked if they would consider having only one or two houses. Mr. Conroy stated they have one buildable lot.

Mr. Conroy read the comments that were received from the abutters. Mr. O'Leary asked if there are any wetlands on the property and Mr. Glossa stated no. Mr. O'Leary asked if the cul-de-sac can be sloped and Mr. Glossa stated this is similar to Echo Estates on Main Street.

David Vlacich, 31 Darwin Lane stated he is a direct abutter and is strongly opposed to something of this density. This doesn't work here.

Joe Moriarty, 28 Darwin Lane stated he is also a direct abutter and they would be fine with one or two houses. This has been in the works for a long time. They paid more money for their lots on the cul-de-

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sac. Mr. Conroy stated that John Hasenjaege went and bought the extra land and then tried to sell it back to the town. Wall Street Development sent letters to the abutters on the street stating he either gets five houses or you get a 40-B. Mr. Petrozzi stated that is not a threat, it is an option.

Mr. Conroy stated a negative vote has no effect on a preliminary plan. Mr. Glossa agrees. He would prefer the board follow their Rules and Regulations and vote yes or no even though it is not binding.

Mr. Moriarty, 28 Darwin Lane stated they were slammed with the threat of a 40-B a year and a half ago. They told Mr. Petrozzi they would support two or three houses and now there are five. We told him we would consider this if the 40-B is off the table, but that has not been done.

Mr. Conroy moved to deny the Darwin Lane Preliminary based on the fact that it can't be done without a waiver from 750' and based on the length of the street now. Motion seconded by Ms. Abate and voted 4-0-0.

Mr. Czachorowski stated if they are going to come back, he asked that they address the safety issues. Mr. Glossa stated they won't come back with a definitive plan unless they know public safety is on board.

**Master Plan Update:** Mr. Czachorowski updated the board on the status of the Master Plan. He said they will try to set up a January meeting with the Planning Board.

Mr. Conroy moved to adjourn. Motion seconded by Ms. Abate and voted 4-0-0. The meeting adjourned at 9:15 p.m.

Respectfully submitted,

Catherine Turco-Abate, Clerk

Accepted 1/19/23